

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TRADER JOE'S COMPANY, a
California Corporation,

Plaintiff,

v.

MICHAEL NORMAN HALLATT, an
individual, d/b/a PIRATE JOE'S a/k/a
TRANSILVANIA TRADING; and
DOES 1-10,

Defendants.

No. 2:13-cv-00768-BJR

TRADER JOE'S MOTION TO SEAL

NOTE ON MOTION CALENDAR:
August 11, 2017

I. INTRODUCTION

Plaintiff Trader Joe's Company files this Motion to Seal requesting that the Court maintain under seal Trader Joe's Opposition to Motion for Withdrawal of Counsel ("Trader Joe's Opposition"), the Declaration of Brian M. Berliner in Support of Trader Joe's Opposition ("Berliner Declaration"), and Exhibits C, D, and E to the Berliner Declaration. Trader Joe's Opposition, the Berliner Declaration, and Exhibits C, D, and E to the Berliner Declaration contain information about the terms of a settlement agreement between the parties, disclosure of which would cause irreparable prejudice and harm to Trader Joe's.

II. CERTIFICATION

The undersigned counsel certifies that counsel for Trader Joe's attempted in good faith to confer with Defendant Michael Hallatt and his counsel prior to filing this motion, as required by Local Civil Rule 5(g)(3)(A) and this Court's Amended Standing Order (Dkt. No. 54). On July 5, 2017, Trader Joe's counsel emailed Mr. Hallatt and his counsel of record—Michael Matesky of Matesky Law PLLC and Michael Atkins of Atkins IP PLLC—informing them of Trader Joe's intent to file this motion and requesting a telephonic meet-and-confer session. Declaration of Jordan Raphael in Support of Trader Joe's Motion to Seal ("Raphael Decl.") ¶ 3, Ex. A. On July 6, 2017, Mr. Matesky replied, "Mike Atkins and I will defer to Mike Hallatt on this, as we are no longer authorized to act on his behalf." *Id.* As of the filing of this motion, Mr. Hallatt has not responded to Trader Joe's request to meet and confer. *Id.* ¶ 3.

III. ARGUMENT

A. Legal Standard

Because Mr. Hallatt's motion to withdraw is non-dispositive and at most "tangentially related to the merits of [this] case," the present motion to seal is governed by the "good cause" standard applicable to the issuance of protective orders under Federal Rule of Civil Procedure 26(c). *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097–99, 1101 (9th Cir. 2016); *see also Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010) ("The 'good cause' standard is not limited to discovery."); *Sun Life Assurance Co. of Canada v. O'Connor*, No. C16-0799-JCC, 2017 WL 1479470, at *1 (W.D. Wash. Apr. 25, 2017) (granting motion to seal exhibit to motion for attorney fees and costs under "good cause" standard). This is a "less exacting" standard than the "compelling reasons" standard that governs the sealing of documents attached to motions that relate directly to the merits of the underlying litigation, and the presumption of public access does not apply. *Ctr. for Auto Safety*, 809 F.3d at 1097–99; *see also In re Midland Nat'l Life Ins.*

1 *Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th Cir. 2012); *Kamakana v. City*
 2 *& Cty. of Honolulu*, 447 F.3d 1172, 1179–80 (9th Cir. 2006) (“The public policies that
 3 support the right of access to dispositive motions, and related materials, do not apply with
 4 equal force to non-dispositive materials.”).

5 **B. Good Cause Supports Granting Trader Joe’s Motion to Seal**

6 Good cause for sealing is present here. Trader Joe’s Opposition, the Berliner
 7 Declaration, and Exhibits C, D, and E to the Berliner Declaration contain information about
 8 the terms of a settlement agreement between the parties. Raphael Decl. ¶¶ 3–8. Both
 9 public and private interests warrant maintaining the confidentiality of this information.

10 First, the strong public interest in promoting settlement of disputes before trial
 11 warrants sealing the documents at issue in Trader Joe’s Motion to Seal. *See Microsoft*
 12 *Corp. v. Motorola, Inc.*, No. C10-1823-JLR, 2012 WL 5476846, at *2 (W.D. Wash. Nov.
 13 12, 2012) (concluding that “the importance of encouraging frank settlement negotiations
 14 outweighs the public’s interest in knowing what was discussed in those settlement
 15 negotiations”); *Christensen Shipyards, Ltd. v. St. Paul Fire & Marine Ins. Co.*, No. C06-
 16 0641-JCC, 2007 WL 564241, at *1, *2 (W.D. Wash. Feb. 16, 2007) (“Intervenors and
 17 Plaintiff’s interest in having their confidentiality agreements enforced, and the Court’s
 18 policy of promoting the resolution of disputes through settlement outweigh the public’s
 19 right to access information regarding the settlement amount in the Underlying Litigation.”).
 20 This important policy interest is reflected in Local Civil Rule 39.1(a)(6), which establishes
 21 that all proceedings within the Court’s Alternative Dispute Resolution Program “shall, in all
 22 respects, be confidential, and shall not be reported, recorded, placed in evidence, disclosed
 23 to anyone not a party to the litigation, made known to the trial court or jury, or construed
 24 for any purpose as an admission or declaration against interest.” In contrast, there is little to
 25 no public interest in disclosure of the terms of the parties’ settlement agreement, which
 26 concerns the resolution of a lawsuit between private parties involving their business affairs.

1 *Cf. Hendrix v. Branton*, No. C93-537-TSZ-RSM, 2012 WL 2455741, at *4 (W.D. Wash.
 2 June 26, 2012) (finding no “overriding need for the public to know the intricate financial
 3 details of the 1995 Settlement Agreement”). And as mentioned in Section III.A, *supra*, the
 4 public’s interest in access to judicial records is diminished where those documents are filed
 5 in connection with non-dispositive motions that do not bear on the merits of the case. *See*
 6 *Kamakana*, 447 F.3d at 1179–80; *cf. Microsoft*, 2012 WL 5476846, at *2 (deeming public
 7 interest in contents of settlement negotiations relatively low based on negotiations’ lack of
 8 relevance to ultimate issues in the case).

9 Second, the strong private interests at issue here also warrant sealing. In particular,
 10 it is appropriate to seal filings that include “business information that might harm a
 11 litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598
 12 (1978); *Ctr. for Auto Safety*, 809 F.3d at 1097. The terms on which Trader Joe’s agreed to
 13 settle this action constitute proprietary business information that Trader Joe’s is entitled to
 14 keep confidential; Trader Joe’s has a legitimate and strong competitive interest in
 15 maintaining the confidentiality of its business decisions, including the terms on which it is
 16 willing to settle a particular litigation. The details and terms of litigation settlements could,
 17 if disclosed, be used against Trader Joe’s by third parties to unfairly “benchmark” future
 18 settlement demands. Public disclosure of the terms on which Trader Joe’s is willing to
 19 settle a matter would be prejudicial to Trader Joe’s business interests, and the inability to
 20 settle litigation on terms that will remain confidential may impair Trader Joe’s willingness
 21 and ability to resolve disputes through settlement.

22 Trader Joe’s will file public versions of Trader Joe’s Opposition and the Berliner
 23 Declaration with the confidential information redacted and will file Exhibits C, D, and E to
 24 the Berliner Declaration under seal. Less restrictive alternatives either would insufficiently
 25 protect the public and private interests at stake or would prevent the Court’s full
 26 consideration of the basis for Trader Joe’s Opposition. In particular, redaction of Exhibits

C, D, and E to the Berliner Declaration is not a viable option, because every substantive portion of the three exhibits discloses information about the terms of the parties' settlement agreement. *Cf. Hendrix*, 2012 WL 2455741, at *4 ("Financial terms are included throughout the 1995 Agreement. Therefore, redacting all financial information from the agreement would not allow the Court the opportunity to review the full Agreement.").

IV. CONCLUSION

For the foregoing reasons, Trader Joe's requests that the Court grant Trader Joe's Motion to Seal and maintain the seal on Trader Joe's Opposition, the Berliner Declaration, and Exhibits C, D, and E to the Berliner Declaration. Should the Court deny Trader Joe's Motion to Seal as to any document, pursuant to Local Civil Rule 5(g)(6) Trader Joe's respectfully requests that the Court (1) withdraw from the record Trader Joe's Opposition and all supporting documents and (2) grant Trader Joe's leave to file an amended version of Trader Joe's Opposition that does not rely on any confidential information or documents the Court has deemed not subject to sealing.

Dated: July 7, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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Dated: July 7, 2017 at Seattle, Washington.

s/Jeremy E. Roller
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